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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

USA CAPITAL REALTY ADVISORS,
LLC,

USA CAPITAL DIVERSIFIED TRUST
DEED FUND, LLC,

USA CAPITAL FIRST TRUST DEED
FUND, LLC,¹

USA SECURITIES, LLC,²

Debtors.

Affects:

- ☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR¹
Case No. BK-S-06-10729-LBR²

CHAPTER 11

Jointly Administered Under Case No.
BK-S-06-10725 LBR

**OBJECTION OF USACM TRUST TO
PROOFS OF CLAIM BASED, IN
WHOLE OR IN PART, UPON
INVESTMENT IN I-40 GATEWAY
WEST LOAN; AND CERTIFICATE
OF SERVICE**

Date of Hearing: February 5, 2010
Time of Hearing: 9:30 a.m.

The USACM Liquidating Trust (the "USACM Trust") moves under § 502 of title 11 of the United States Bankruptcy Code (the "Bankruptcy Code") and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for an order disallowing the Proof of Claim filed by individual investors ("Direct Lenders") against USA

¹ This bankruptcy case was closed on October 12, 2007.

² This bankruptcy case was closed on December 26, 2007.

1 Commercial Mortgage Company (“USACM”) to the extent such claims are based upon an
2 investment in the I-40 Gateway West Loan (the “I-40 Gateway Loan”). This Objection is
3 supported by the Court’s record and the Declaration of Edward M. Burr in Support of
4 Omnibus Objections to Proofs of Claim Based Upon the Investment in I-40 Gateway Loan
5 filed with the Court on April 28, 2008, [DE 6264] (the “Burr Decl.”).

6 **I. INTRODUCTION**

7 On February 14, 2007, the borrower paid off the I-40 Gateway Loan in full. In
8 turn, USACM distributed the proceeds to the Direct Lenders who were paid in full, subject
9 to servicing fees and any other charges under their respective Loan Servicing Agreements
10 and this Court’s orders, including the Confirmation Order. This Objection seeks an order
11 from the Court disallowing Direct Lender claims to the extent they are based upon an
12 investment in the I-40 Gateway Loan. To the extent a Direct Lender claim is based upon
13 an investment in a different loan, it will not be impacted by this Objection.

14 **II. JURISDICTION**

15 The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and
16 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core
17 proceeding under 28 U.S.C. § 502 and Bankruptcy Rule 3007.

18 The statutory predicate for the relief requested herein are 11 U.S.C. § 502 and
19 Bankruptcy Rule 3007.

20 **III. BACKGROUND**

21 On April 13, 2006 (“Petition Date”), USACM, USA Securities, LLC (“USA
22 Securities”), USA Capital Realty Advisors, LLC (“USA Realty”), USA Capital
23 Diversified Trust Deed Fund, LLC (“DTDF”), USA Capital First Trust Deed Fund, LLC
24 (“FTDF,” together with DTDF, the “Funds”) (collectively, the “Debtors”), filed voluntary
25 petitions for relief under chapter 11 of the Bankruptcy Code. Debtors continued to operate
26 their businesses, if any, as debtors-in-possession pursuant to sections 1107(a) and 1108 of

1 the Bankruptcy Code. Debtors' post-petition management of the Debtors was under the
2 direction of Thomas J. Allison of Mesirow Financial Interim Management, LLC
3 ("Mesirow"), who served as the Chief Restructuring Officer.

4 USACM was a Nevada corporation that, prior to the Petition Date, was in the
5 business of underwriting, originating, brokering, funding and servicing commercial loans
6 primarily secured by real estate, both on behalf of investors and for its own account. That
7 business included the solicitation of individual investors to purchase fractional interest in
8 loans that USACM originated and then serviced. These investors, totaling approximately
9 3,600 as of the Petition Date, are referred to as "Direct Lenders" in USACM's bankruptcy
10 case and in this Objection. Although USACM serviced and sometimes originated the
11 loans in which the Direct Lenders invested, generally USACM was not a borrower on
12 these loans.

13 On January 8, 2007, this Court entered its Order Confirming the "Debtors' Third
14 Amended Joint Chapter 11 Plan of Reorganization" as Modified Herein [Docket No.
15 2376] (the "Confirmation Order"). Under the Plan, the USACM Trust is the successor to
16 USACM with respect to standing to seek allowance and disallowance of Claims. The
17 USACM Trust exists as of the Effective Date of the Plan, which was March 12, 2007.
18 Geoffrey L. Berman is the Trustee.

19 The spreadsheet attached as **Exhibit A** lists Proofs of Claim filed by Direct Lenders
20 that appear to be based, in whole or in part, upon an investment in the I-40 Gateway Loan.
21 **Exhibit A** shows the Proof of Claim number, the claimant, the claimant's address, the
22 total amount of the claim and the total amount of the claim that appears to be related to an
23 investment in the I-40 Gateway Loan based upon the information provided by the
24 claimant. The claims listed in **Exhibit A** are referred to hereafter as the I-40 Gateway
25
26

1 Loan Claims. A copy of the first page of the proof(s) of claim listed on **Exhibit A** is
2 attached as **Exhibit B**.

3 On or about February 14, 2007, the I-40 Gateway Loan was paid off in full, as
4 reflected in USACM's books and records. (Burr Decl. ¶ 8.) Shortly thereafter, USACM
5 processed the payoff and distributed the proceeds to the Direct Lenders on the I-40
6 Gateway Loan. *Id.* The Direct Lenders were in turn paid in full for their investment in the
7 I-40 Gateway Loan, subject to servicing fees and any other charges under their respective
8 Loan Servicing Agreements and this Court's orders, including the Confirmation Order.
9 (Burr Decl. ¶ 9.) In general, the Direct Lenders received their principal and interest on the
10 I-40 Gateway Loan, less sums withheld for servicing fees, servicer advances, Prepaid
11 Interest and sums known as the 2% Holdback pursuant to the confirmed Plan. *Id.* On the
12 Effective Date of the Plan, the Prepaid Interest was applied, a portion of the 2% Holdback
13 was applied to the allowed claims of the Direct Lender Committee, and the balance paid to
14 the Direct Lenders. *Id.* Accordingly, the USACM Trust no longer has further obligations
15 to the Direct Lenders arising out of the I-40 Gateway Loan. (Burr Decl. ¶ 10.)

16 **IV. OBJECTION**

17 Under the Bankruptcy Code, any Claim for which a proof of claim has been filed
18 will be allowed unless a party in interest objects. If a party in interest objects to the proof
19 of claim, the Court, after notice and hearing, shall determine the amount of the Claim and
20 shall allow the Claim except to the extent that the Claim is "unenforceable against the
21 debtor . . . under any . . . applicable law for a reason other than because such claim is
22 contingent or unmatured." 11 U.S.C. § 502(b). The USACM Trust is entitled to object to
23 proofs of claim under 11 U.S.C. § 502(a). This objection is timely under the confirmed
24 Plan, as the deadline for such objections has been extended to February 5, 2010, by this
25 Court's orders.
26

1 The USACM Trust objects to the I-40 Gateway Loan Claim and requests that the
2 Court disallow the claims listed in **Exhibit A** to the extent those claims are based upon a
3 Direct Lender investment in the I-40 Gateway Loan because the Direct Lenders were paid
4 in full on their investments in I-40 Gateway Loan. The USACM Trust asks that the Court
5 sustain this objection and grant such other and further relief as is just and proper.

6 Dated: January 8, 2010.

7 LEWIS AND ROCA LLP

8
9 By /s/ John C. Hinderaker

10 Rob Charles, NV 6593

11 John C. Hinderaker, AZ 18024 (*pro hac vice*)

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17 *Attorneys for the USACM Liquidating Trust*

18 Copy of the foregoing and pertinent

19 Portion of Exhibit A and Exhibit B

20 mailed by first class

21 Postage prepaid U.S. mail

22 On January 8, 2010 to:

23 All parties in interest listed on

24 Exhibit A attached

25 /s/ Leilani Lista

26 Leilani Lista

Lewis and Roca LLP